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13 UNITED STATES DISTRICT COURT
14 FOR THE
15 NORTHERN MARIANA ISLANDS
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18 MOSES T. FEJERAN and
19 QIANYAN S. FEJERAN,
Plaintiffs,
vs.
20 AVIATION SERVICES (CNMI),
21 LTD. dba FREEDOM AIR,
Defendant.
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CIVIL ACTION NO. 05-0033
**DEFENDANT AVIATION SERVICES
(CNMI) LTD. DBA FREEDOM AIR'S
OPPOSITION TO MOTION TO COMPEL;
CERTIFICATE OF SERVICE**

**HEARING DATE: MARCH 15, 2007
TIME: 1:30 P.M.**

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**DEFENDANT AVIATION SERVICES (CNMI) LTD. DBA FREEDOM AIR'S
OPPOSITION TO MOTION TO COMPEL**

22 The substance of this Opposition to the Motion to Compel is briefed in Defendant
23 Aviation Services (CNMI), Ltd. dba Freedom Air's Motion to Strike Frank Perez as an Expert
24 Witness and to Order IME, filed February 6, 2007, and its Reply Memorandum in Support of its
25 Motion to Strike, filed concurrently herewith. Defendant herein incorporates the arguments
26 presented in its Motion to Strike and Reply Memorandum. Further, without unnecessarily
27 restating the issues already before the Court under the Motion to Strike, Defendant makes the
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1 following points specifically in response to the Motion to Compel:

2 1. Plaintiffs' expert Frank Perez inspected Defendant's aircraft in August
3 2006.

4 2. Through motions and various emails, Plaintiffs represented to the Court
5 and to Defendant's counsel that it would disclose an expert report by late September 2007. They
6 failed to do so and to this day have failed to do so.

7 3. Plaintiffs now have had seven months to produce Mr. Perez's report,
8 leaving only one month for Defendant's expert report to inspect the plane and compile his own
9 expert report and rebuttal expert report. As a result, Defendant has been prejudiced by not being
10 allowed adequate time to prepare its own expert report.

11 4. The information Plaintiffs requested and sought to be compelled pertains
12 to the heights of the risers, the widths of treads, and the railings, all of which directly relate to
13 Mr. Perez's testimony. However, Mr. Perez's report is now untimely.

14 5. Because of the untimely report, the Court has grounds to strike Mr. Perez
15 as an expert witness, as there is no purpose to disclose the information requested.

16 6. Plaintiffs cite but fail to make a few important points outlined in *Jayne H.*
17 *Lee, Inc. v. Flagstaff Indus. Corp.*, 173 F.R.D. 651 (D. Md. 1997). Specifically, *Jayne H. Lee*
18 discusses at length the timely and cooperative measures that counsel must strive to maintain
19 when it comes to discovery disputes. Plaintiffs have failed to meet the *Jayne H. Lee* standard of
20 timeliness and cooperation by failing to provide Mr. Perez's report by the agreed-upon late-
21 September deadline.

22 7. It is furthermore ironic that Plaintiffs - who have failed to produce an
23 expert report within the past seven months and now seek an additional two months to compile -
24 now seek to impose sanctions on Defendant. There is no justification for imposing any sanctions

1 on Defendant in light of the extreme untimeliness of Mr. Perez's report and the present Motion to
2 Strike Mr. Perez's testimony.

3 In sum, Plaintiffs' Motion to Compel should be denied because it seeks the disclosure of
4 information for a report that should have been submitted six months ago, and which now cannot
5 be disclosed without imposing great prejudice on Defendant. Moreover, the request for
6 sanctions should be denied on the grounds that Plaintiff is at fault for the late disclosure of Mr.
7 Perez's report, and the subsequent irrelevance of his expert opinions.

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9 DATED: Hagåtña, Guam, March 5, 2007.

10 CARLSMITH BALL LLP

11 /s/ David P. Ledger

12 DAVID LEDGER
13 Attorneys for Defendant
14 Aviation Services (CNMI), Ltd.
dba Freedom Air

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby declares that on the 5th day of March 2007, I will cause to be
3 served, via electronic filing/service, a true and correct copy of **DEFENDANT AVIATION**
4 **SERVICES (CNMI) LTD. DBA FREEDOM AIR'S OPPOSITION TO MOTION TO**
5 **COMPEL; CERTIFICATE OF SERVICE** upon the following Counsel of record.

6 George L. Hasselback, Esq.
7 O'Connor Berman Dotts & Banes
8 Second Floor, Nauru Building
9 Post Office Box 501969
Saipan, MP 96950

10 DATED: March 5, 2007.

11 /s/ David P. Ledger

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13 DAVID LEDGER

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